

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4230 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

KETANKUMAR JAYPRAKASH SHAH

Versus

DISTRICT MAGISTRATE,

Appearance:

MR JB PARDIWALA for Petitioner

MR HL JANI, AGP, for the Respondent Nos.1,2,4 and 5.

MR BT RAO ADDL STANDING COUNSEL for respondentNo.3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/08/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order of detention dated 4-5-98 passed by the District Magistrate, Valsad under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"). Suffice it to say that the detaining authority has

recorded a finding that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community, it is necessary to do so and therefore the order of detention has been passed.

Since this petition is required to be allowed on the ground of delay in considering the representation, it is not necessary for me to refer to and deal with the other contentions raised in this petition and to renarrate the allegations made in the grounds of detention.

Mr. Pardiwala, learned Advocate appearing for the petitioner has invited my attention to the averments made in the petition that the petitioner addressed an application dated 9-5-98 to the Jail Superintendent, Rajkot District Jail, Rajkot requesting him to send telegram to the six authorities mentioned therein alongwith the contents of the telegrams. It is the grievance of the petitioner that the Jail Superintendent has failed to send the telegram in the form of representation to the concerned authorities as requested by the detenu and even if the same were sent then also there is an inordinate delay on the part of the authorities to consider the representation rendering the continued detention bad in law.

Mr.P.D.Shah, Under Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar has filed an affidavit in reply in this matter in which in paragraph 3 he has dealt with the aforesaid contention as under:

"3. With reference to para 9 of the petition, I deny the contentions and averments made by the petitioner therein. I say that the petitioner has stated about the representation dated 9-5-1998 addressed to the Jail Superintendent, Rajkot and has requested to send to all the concerned authority. I say that the said representation dated 9-5-1998 addressed to the Secretary, Food, Civil Supplies and Consumer Affairs Department was received in the Special Branch of Food, Civil Supplies and Cosumer Affairs Department on 12-5-1998. The file of the said representation was put up by the Special Branch with a note dated 13-5-1998. It was cleared by the Section Officer on 13-5-1998, and submitted before the Under Secretary. I further say that it was cleared by the Under Secretary on the day i.e. 13-5-1998 and put up before the

Deputy Secretary, which was cleared by the Deputy Secretary on the same day i.e. 13-5-1998 and put up before the Deputy Secretary, which was cleared by the Deputy Secretary on 14-5-1998. I say that the said file was then put up before the Addl Chief Secretary and it was cleared by the Addl Chief Secretary on 15-5-1998 and submitted before the Hon'ble Minister of Civil Supplies on 15-5-1998. It was cleared by the Hon'ble Minister of Civil Supplies on 15-5-1998 i.e. on the same day. As the file was received back on 15-5-1998 and as the decision was taken about rejection of the representation, the detenu was replied about rejection of the representation by a letter dated 16-5-1998. It is therefore quite clear that the representation dated 9-5-1998 sent by the Jail authority was considered promptly and without any delay. All the contentions raised in this para are therefore not tenable and are denied hereby."

Reading the contents of the said affidavit, it is clear that the representation of the petitioner travelled from table to table from 12-5-1998 to 16-5-1998 and it was ultimately rejected by the State Government on 16-5-1998 and was communicated to the petitioner by post which was received on 23-5-1998. The Supreme Court in *Harish Pahwa vs State of U.P. and ors*, AIR 1981 SC 1126 has criticised the action of the State Government to deal with the representation made by the detenu therein. It is observed by the Supreme Court that:

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department nor it is apparent why the Law Department had to be consulted at all. Again we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation..... Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation

to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import....."

In the instant case also even though the petitioner had made a request to send the representation by telegrams at the cost of the petitioner himself, the authority thought it fit to send the same by regular post which was received by the concerned department on 12-5-1998 and had travelled from table to table and ultimately the decision was communicated on 23-5-1998 to the petitioner i.e. seven days after the date of receipt thereof. In my opinion, this inordinate delay on the part of the State Government in dealing with and deciding the representation has not been satisfactorily unexplained and therefore the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The order of detention dated 4-5-98 is quashed and set aside. The detenu Ketankumar Jayprakash Shah is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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